

# **SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND NINGBO FTZ FENGLI INDUSTRIAL CO., LTD**

## **1. RECITALS**

### **1.1 The Parties**

**1.1.1** This Settlement Agreement (“Agreement”) is entered into by and between Ningbo FTZ Fengli Industrial Co., Ltd (“FZL Tools”) and APS&EE, LLC (“APS&EE”). APS&EE and the FZL Tools shall hereinafter collectively be referred to as the “Parties”.

**1.1.2** APS&EE is an organization based in California with an interest in protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices, which includes promoting awareness of exposure to toxic chemicals and reducing exposure to hazardous substances found in consumer products.

**1.1.3** APS&EE alleges that the FZL Tools is a person in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

### **1.2 Allegations**

**1.2.1** APS&EE alleges that FZL Tools was responsible for selling the DG Hardware tape measures, including N0053, 4-30000-23457-8 (hereinafter collectively the “Products”) in the State of California causing users in California to be exposed to Di (2-ethylhexyl) Phthalate (“DEHP”), Di-n-Butyl Phthalate (“DBP”), and Lead without providing “clear and reasonable warnings”, in violation of Proposition 65. DEHP, DBP, and Lead are potentially subject to Proposition 65 warning requirements because DEHP is listed as known to cause cancer and reproductive toxicity, and DBP is listed as known to cause birth defects and other reproductive harm, and Lead is listed as known to cause cancer and birth defects or other reproductive harm.

**1.2.2** On February 18, 2019, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”) to Dollar General Corp., Dolgen California, LLC, Dolgencorp. LLC (collectively, the “Dollar General Entities”) and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. On March 14, 2019, APS&EE provided a Supplemental Sixty-Day Notice of Violation (“Supplemental Notice”) to the Dollar General Entities and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products. The Notice and Supplemental Notice shall hereinafter collectively be referred to as the “Notices”.

### **1.3 No Admissions**

FZL Tools denies all allegations in APS&EE’s Notices and maintains that the Products have been, and are, in compliance with all laws, and that FZL Tools has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by FZL Tools but to the contrary as a compromise of claims that are expressly contested and denied. However, nothing in this section shall affect the Parties’ obligations, duties, and responsibilities under this Agreement.

### **1.4 Compromise**

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

### **1.5 Effective Date**

The “Effective Date” shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

## **2. INJUNCTIVE RELIEF**

### **2.1 Reformulation**

As of the Effective Date, FZL Tools shall not distribute, sell or offer for sale the

Products in California unless (a) the Product contains no more than 100 parts per million (0.01%) of Lead or DBP, and no more than 1,000 parts per million (0.1%) of DEHP (“Reformulated Product”), or (b) the Product is distributed, sold, or offered for sale with a clear and reasonable warning as described below in Section 2.2.

## **2.2 Warning Obligation**

As of the Effective Date, for Products that are not Reformulated Products, FZL Tools shall not distribute, supply, and/or sell the Products in California unless clear and reasonable Proposition 65 warnings are provided with each unit with the following warning with the capitalized and emboldened wording:

**WARNING:** This product can expose you to chemicals, including Lead, known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

Each unit shall carry said warning directly on each unit or its label or package, with such conspicuousness as compared with other words, statements or designs as to render it likely to be read and understood by an ordinary consumer prior to sale.

## **2.3 Changes In Warning Requirements**

If modification or amendments to Proposition 65 or its regulations after the effective date are inconsistent with, or provide warning requirements or options different from those set forth above, then FZL Tools may modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations.

### **3. PAYMENTS**

#### **3.1 Civil Penalty Pursuant To Proposition 65**

In settlement of all claims referred to in this Agreement, FZL Tools shall pay a total civil penalty of two thousand dollars (\$2,000.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75% (\$1,500.00) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$500.00) for APS&EE.

FZL Tools shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$1,500.00; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$500.00. FZL Tools shall remit the payments within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

#### **3.2 Reimbursement Of APS&EE’s Fees And Costs**

FZL Tools shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, FZL Tools shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of twenty thousand dollars (\$20,000.00). FZL Tools shall remit the payment within five (5) business days of the Effective Date, to:

Lucas T. Novak, Esq.  
LAW OFFICES OF LUCAS T. NOVAK  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

### **4. RELEASES**

#### **4.1 APS&EE’s Release Of FZL Tools**

APS&EE, in consideration of the promises and monetary payments contained

herein, hereby releases FZL Tools and its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as the Dollar General Entities, and all predecessors, successors, and assignees of any of them (collectively “Released Parties”), from any violation of Proposition 65 regarding the failure to warn about exposure to DEHP, DBP, and/or Lead arising in connection with the Products sold or offered for sale by any of the Dollar General Entities prior to the Effective Date.

#### **4.2 FZL Tools’ Release Of APS&EE**

FZL Tools, and on behalf of the Released Parties, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against FZL Tools in this matter. If any Released Party should institute any such action, then APS&EE’s release of said Released Party in this Agreement shall be rendered null and void.

#### **4.3 Waiver Of Unknown Claims**

Each of the Parties acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Each of the Parties waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. The Parties acknowledge that each may subsequently discover facts in addition to, or different from, those that it believes to be true with

respect to the claims released herein. The Parties agree that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

**5. SEVERABILITY**

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect.

**6. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California.

**7. NOTICE**

All correspondence and notice required to be provided under this Agreement shall be in writing and delivered personally or sent by first class or certified mail addressed as follows:

TO FZL TOOLS: Lisa Cui Ningbo FTZ Fengli Industrial Co., Ltd Rm 410, Block B, Liyuajshangdu Mansion, 39#, No.158 Huancheng West Road, Ningbo	TO APS&EE: Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069
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**8. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute the same document. Execution and delivery of this Agreement by e-mail, facsimile, or other electronic means shall constitute legal and binding execution and delivery. Any photocopy of the executed Agreement shall have the same force and effect as the originals.

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9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date:

5/08/19

By:

[Signature]  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date:

\_\_\_\_\_

By:

\_\_\_\_\_  
Authorized Representative of Ningbo FTZ Fengli Industrial Co., Ltd

9. **AUTHORIZATION**

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

**AGREED TO:**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Representative of APS&EE, LLC

**AGREED TO:**

Date: 5.27.2019

By: Lisa Cui  
Authorized Representative of Ningbo FTZ Fengli Industrial Co., Ltd